

Title Guaranty Division Telephonic Board Meeting Minutes

October 2, 2007

Board Members Present:

Deborah Petersen (by phone)
Walter Murphy (by phone)
Mitchell Taylor
Pat Schneider
Surasee Rodari

Staff Members Present:

Loyd Ogle, TGD Director
Matt White, TGD Deputy Director
Mark Thompson, IFA General Counsel
Susan Mock, TGD Administrative Assistant
Lon Kobernusz, IFA Accountant
Linda Berg, TGD Business Development
Director
Joseph Jones, IFA Director of Governmental
Affairs

Others Present:

Bill Blue – American Abstract Company
Bob McCloney – United Land Title Company
Ron Robinson – Legislative Services Agency

Call to Order

Mr. Taylor called the October 2, 2007, meeting of the Title Guaranty Board of Directors to order at 10:11 a.m.

Review & Approval of Board Meeting Minutes

The Board discussed the June 5, 2007, meeting minutes. Mr. Murphy requested that one of the names on the minutes be corrected to read "Kadrlik." Mr. Murphy also would like to have a synopsis of the Charles Hendricks waiver proceedings instead of the notation that the tapes of the meeting are available. Mr. Ogle said it was done that way because it was simpler to reference the tapes instead of summarizing a five- to six-hour proceeding. Mr. Murphy also wanted a similar synopsis for the Sharon Minger waiver proceedings. Ms. Petersen agreed with Mr. Murphy, but she was also comfortable with approving the minutes as is with a directive that in the future each speaker be specifically noted by name and a one- or two-sentence summary of what they stated. Ms. Schneider said she was afraid if the proceedings were condensed into a five- or 10-page document, something might get left out someone else might think is important. Mr. Murphy said there had always been a synopsis in the past and that people would not come to Des Moines for the tapes. Mr. Thompson noted that the tapes could be e-mailed or mailed.

Motion: Mr. Murphy moved that a complete synopsis of the proceedings of Mr. Hendricks' waiver request and Ms. Minger's waiver request be incorporated in the minutes of the June 5, 2007, meeting. No one seconded the motion. This motion died for lack of a second.

Motion: On a motion by Ms. Petersen, seconded by Ms. Schneider, the Board approved the June 5, 2007, Board meeting minutes as submitted by a 3-1 vote. Ms. Petersen: Yes. Mr. Murphy: No. Ms. Schneider: Yes. Mr. Taylor: Yes.

Mr. Taylor noted that the reason for conducting the meeting telephonically is that it was impractical for all of the Board members to be present because of their calendars.

The Board discussed the July 10, 2007, meeting minutes.

Motion: On a motion by Ms. Petersen, seconded by Ms. Schneider, the Board unanimously approved the July 10, 2007, Board meeting minutes.

The Board discussed the July 31, 2007, meeting minutes. Mr. Murphy requested that the sentence saying that his dissenting opinion regarding Mr. Hendricks' waiver not be included as part of the ruling be double-checked to make sure he said that. Mr. Ogle said that sentence could be stricken from the minutes. Mr. Taylor asked if Mr. Murphy wanted that sentence stricken, and Mr. Murphy said it would be acceptable.

Motion: On a motion by Ms. Petersen, seconded by Ms. Schneider, the Board unanimously approved the July 31, 2007, Board meeting minutes with the sentence regarding the dissenting opinion stricken.

The Board discussed the August 15, 2007, meeting minutes.

Motion: On a motion by Ms. Schneider, seconded by Mr. Murphy, the Board unanimously approved the August 15, 2007, Board meeting minutes.

Mr. Murphy requested on the June 5 meeting, at the very least, his comments to the Board shortly before the vote on the Hendricks waiver should be included in the minutes. He said it would give his reasons why he voted against granting the waiver. Mr. Taylor asked the Board if they wanted to review its passage of the June 5 minutes. Ms. Schneider and Ms. Petersen said they did not want to go back and amend the minutes.

Review of Financial Reports, Transfer of Funds to IFA's Housing Programs, and Approval of Financial Reports

Mr. Ogle gave the financial report. He said that TGD remains profitable. TGD's expenses have to be around \$215,000 to generate revenue. That figure goes down if revenue goes down because TGD is not making as many payouts to attorneys and abstractors to issue. In addition to TGD's reserves for claims, TGD has a six-month operating reserve. The reserve is funds set aside so that if this program should shut down, there would be enough funds to pay all of TGD's expenses for six months. Accounting was not accruing or reserving for the new expenditure item of the payouts to attorneys and abstractors to issue certificates. Therefore, instead of taking the excess funds and transferring them, accounting is pulling those funds to make up that difference this quarter.

Mr. Rodari entered the meeting at 10:30 a.m.

Mr. Kobernusz agreed with Mr. Ogle. He said it will take some time to build that cash up so they can start transferring to housing programs again. After some discussion, Mr. Kobernusz said that the incentive fees have something to do with profits but not the transfer of funds for housing.

Motion: On a motion by Ms. Schneider, seconded by Mr. Rodari, the Board unanimously approved the Financial Report.

Director's Report

Mr. Ogle gave the director's report. There are four areas TGD is looking to introduce legislation. One is in regard to the Mortgage Release Program. Currently, under the Code, that program holds staff to a strict liability standard. If an error is made by staff, TGD is liable for releases of mortgages under this program. The highest mortgage that can be released now is \$500,000. TGD is getting requests to release mortgages well in excess of that amount. Staff was not comfortable with requesting authority from the Board to release mortgages in excess of \$500,000 until the standard was changed. Staff wants to change the strict liability standard to a negligence standard.

Another area for legislation is in abstractor licensing. TGD introduced a bill to license abstractors about two or three session ago in cooperation with the ILTA. At this point, they want to start with the bill that TGD introduced a few years ago. One of the reasons TGD is interested in getting bills out for both abstractor licensing and escrow company licensing is there is a change in the legislature, and this legislature is more apt to pass consumer protection-oriented legislation.

Mr. Ogle said that TGD is in discussion with the superintendent of banking and the attorney general's office about a bill to license closing and escrow companies. This may not be a TGD bill, but TGD is very involved with the content of the legislation.

Mr. McCloney said the ILTA is in the process of doing a certification program to have certified abstractors throughout the state. ILTA would like to postpone that long enough to work with the bar association before licensing gets passed.

Mr. Ogle said many transactions were held up due to very small judgment liens. At some point, a judgment is so small that it costs more to try to recover that judgment than it is worth. TGD is looking at having a cutoff at about the \$300-\$500 range, where if a judgment is smaller than that, it would not automatically attach as a lien. There would be exceptions, such as child support. The legislature would have to make that determination.

Mr. Ogle discussed administrative rules for the waiver process. There is related action at the IFA Board meeting regarding this. Since the IFA Board has rulemaking authority, they have the authority to waive or grant variances of any rules. The general counsel's recommendation to the IFA Board is that they streamline the process by which they hear waivers. Instead of having someone request the waiver in front of the IFA Board, the waiver would be heard by the IFA Executive Director. He would have 60 days upon application to investigate and come up with a recommended written ruling. That written ruling would then be presented to the IFA Board. They would either accept that ruling or

reject it. If they rejected it, they would direct staff to rewrite the ruling and then bring it forward at a subsequent Board meeting. The recommendation from general counsel and the TGD Board's history of dealing with plant waivers is that TGD adopt a similar process for the hearing of plant waivers. That process would parallel the IFA process. Mr. Ogle is looking for input from the TGD Board which direction they want to take on the process. Mr. Taylor said if IFA passed their rules, he would like to see a draft so the TGD Board can see if TGD follows IFA's lead. Ms. Schneider and Ms. Petersen agreed with Mr. Taylor. However, Ms. Petersen said she wanted to wait until the lawsuit concerning the Hendricks waiver was resolved. Mr. Murphy noted that the court ruling could set some standards for TGD. Mr. Taylor said he wanted to see proposals at the next TGD Board meeting if IFA passes their waiver regulations.

Motion: On a motion by Ms. Schneider, seconded by Mr. Rodari, the Board approved putting together after IFA votes a draft of the Administrative Rules for Board review by a 3-2 vote. Ms. Petersen: No. Mr. Murphy: No. Ms. Schneider: Yes. Mr. Taylor: Yes. Mr. Rodari: Yes.

Mr. Ogle brought up the Fannie Mae foreclosure product. He discussed a letter from Fannie Mae that was sent to all the attorneys in Iowa who do foreclosure work on their behalf. Fannie Mae is capping the amount they will pay for title work on the preforeclosure work to \$200. If the foreclosure attorney cannot find someone to do it for that amount, Fannie Mae has identified who will do so. That vendor is identified as Land America. There is not a title insurance product that goes with foreclosures. Land America subcontracts the work to a title searcher or abstractor and then returns it to the attorney who requested that information with the title searcher or abstractor who did the work marked out. Mr. Ogle thought it would be a good service to TGD's members to be able to provide the same service, although in TGD's case they would not take any cut of that \$200. TGD would send a letter to all participating members asking if they want to participate in the program. If anyone wanted to provide that service, there would be an indication on TGD's Web site.

Mr. Ogle discussed the reinsurance treaty. They are trying to position TGD to provide all the range of services that out-of-state title companies are able to provide. On commercial transactions, closing protection letters are becoming a big issue. The problem is with big commercial deals, a closing protection letter from TGD is not enough. They want to see a big reinsurer stand behind a closing protection letter. TGD's current reinsurer, the Florida Fund, does not provide that kind of reinsurance. Mr. Ogle said they sent out requests for proposals to the big five reinsurers for the reinsurance treaty.

Deputy Director's Report

Mr. White delivered the deputy director's report. He gave some summaries on the claims TGD had last fiscal year and what came in this fiscal year. In fiscal year 2007, TGD paid \$3,000 in claims, which is one claim, and a couple of filings of \$14 to clear a couple of titles. In 2007, TGD received 41 claims total, a lot of which were closing instruction claims. TGD has one mechanic's lien claim being litigated now, 11 prior judgments, and one TGD is litigating dealing with purchase money mortgage. TGD paid \$705 for one claim so far and TGD has received 23 claims from July 1 until this Board meeting.

Mr. White also delivered the Mortgage Release Program report. TGD gets about 30 requests every month.

Business Development Director's Report

Ms. Berg gave the business development director's report. She distributed the registration form for the annual conference and the new industry brochure. She also summed up TGD's activities in the marketing area. One of the things TGD is doing internally is forming a group to focus on who the top lenders are in the state who are either not using Title Guaranty or using Title Guaranty minimally and influence them to use Title Guaranty more. The annual conference is November 15 in Des Moines.

Field Operation Director's Report

Ms. Berg delivered the business development director's report. TGD has now started auditing its closers and issuers. One audit has been done so far, and a number of audits are scheduled.

Next Meeting Date and Time

The next Board meeting will be December 4, 2007, at 10:30 a.m. The following Board meetings will be March 4, 2008; June 3, 2008; September 9, 2008; and December 2, 2008.

Adjournment

Motion: On a motion by Ms. Schneider, seconded by Mr. Rodari, the Board unanimously voted to adjourn at 11:31 a.m.

Dated this December 4, 2007,

Respectively submitted:

Approved as to form:

Loyd W. Ogle, Director
Title Guaranty Division

Mitch Taylor, Chair
Title Guaranty Division